

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 565 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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YUNUS MOHMAD GHOGHAEALA

Versus

MAHERUNISHA D/O GULAM MOHMAD ISMAIL

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Appearance:

Mr.M.M.Shaikh,Advocate for Petitioner.  
MR BF UJJAINI for Respondent No. 1 & 2.  
Mr. S.T.Mehta,Addl.P.P. for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 08/01/97

ORAL JUDGEMENT

This petition arises of maintenance application being Maintenance Application No. 207 of 1984 made by respondent No.1 under section 125 of the Code of Criminal Procedure, 1973 for her maintenance and for the maintenance of her minor child-respondent No.2. Said

application was allowed by the learned Judicial Magistrate, First Class, Jambusar by judgment and order dated 21st January, 1985. Learned Magistrate allowed sum of Rs.500/- every month for the maintenance of respondent No.1 and Rs.400/- every month for the maintenance of respondent No.2.

2. Feeling aggrieved, petitioner [husband] preferred Criminal Revision Application No. 37 of 1985 before the learned Additional Sessions Judge, Bharuch which was dismissed on 7th October, 1985. Petitioner feeling aggrieved, has preferred this petition under Article 227 of the Constitution.

3. This petition was taken up for final hearing on 6th January, 7th January and 8th January i.e. to day. Neither of the advocates has remained present inspite of notice. The matter is, therefore, disposed of on merits after perusing the records and proceedings.

4. Relevant facts, briefly stated, are that the petitioner had married one Bai Razia some 14 years before the date of the application and during that marriage, Bai Razia had given birth to three children. However, due to ill health, Bai Razia had gone to reside with her parents and was residing with her parents for a long time. During her stay with her parents, petitioner married with present respondent No. 1 some time in the year 1981 and a son - respondent No. 2 was born to them on 6th January, 1982. Five days thereafter, Bai Razia came back from her parents and started residing with the petitioner and his family. Respondent No. 1, thereafter, went to her parents and refused to stay with the petitioner and his family. She filed above referred application for maintenance claiming that while the petitioner was abroad where he was serving, members of his family used to torture her. She has further claimed that she had been given an understanding that Bai Razia would be divorced by the petitioner after she married to the petitioner. However, the petitioner did not divorce Bai Razia and instead, Bai Razia came back and started residing with the petitioner. She has claimed that the petitioner is an Engineer and was serving abroad and was earning salary of Rs.15,000/- per month.

5. It is not disputed that the petitioner was serving abroad. However, the petitioner has claimed that his salary was Rs.10,000/- per month for which he has not produced any evidence. Except bare words of respondent No. 1, there is nothing on record to support her claim that she was being ill-treated or tortured by the members

of the petitioner's family. It, therefore, cannot be believed that the respondent No. 1 was being ill-treated or tortured by the members of the petitioner's family as alleged by her.

6. It is, however, admitted that Bai Razia was suffering from ill-health and was residing with her parents since the year 1979. Thus, at the time of marriage of petitioner with respondent No.1, Bai Razia was residing with her parents and she came back to reside with the petitioner after respondent No.2 was born. It is, therefore, required to be believed that respondent No.1 had married to the petitioner with an understanding that she alone would be residing with the petitioner and his family and Bai Razia whether divorced or not, would not reside with the petitioner. However, during the absence of respondent No.1 at the time of birth of respondent No.2, Bai Razia came back and started residing with the petitioner. Though under the Personal Law, it was lawful for the petitioner herein to contract second marriage during the subsistence of the first marriage, respondent No. 1 could not be compelled to stay with the petitioner while his first wife was residing with him, particularly when she had returned back to her parents. In the circumstances, refusal of respondent No. 1 to reside with the petitioner alongwith Bai Razia cannot be said to be wholly unjustified. Respondent No. 1, therefore, is entitled to claim maintenance from the petitioner for herself and her child.

7. It is not disputed that the petitioner is an Engineer and was serving abroad. The petitioner has not raised any dispute that the maintenance allowed to respondent No.1 and 2 is excessive considering his income and his liabilities. Maintenance allowed by the learned Magistrate, therefore, requires to be confirmed.

8. In the circumstances, petition is dismissed.  
Rule is discharged. Interim order is vacated.

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